

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

AG SERVICES OF AMERICA, INC.,
an Iowa corporation,

Plaintiff,

vs.

Civ. No. 96-1637 JC/WWD

JOHN D. NIELSEN a/k/a JACK NIELSEN,
et al.,

Defendants and
Third Party Plaintiffs,

vs.

TERRY LUNDELL,

Third Party Defendant.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Plaintiff's Motion to Compel filed February 6, 1998. Plaintiff served a request for production on Defendants on March 27, 1997, and Defendants served their response to the aforementioned request on May 8, 1997. Plaintiff served its motion to compel by mail on January 14, 1998, approximately eight months after having received Defendants' responses. Our local rule, D.N.M.LR-CIV. 26.6, reads as follows:

Objections to Discovery. A party served with objections to:

- an interrogatory;
- request for production or inspection; or
- request for admission

must proceed under D.N.M. LR-CIV.-Civ. 37.1 within twenty (20) calendar days of service of an objection unless the response specifies that documents will be produced or inspection allowed. In this case, the party must proceed under D.N.M.LR-CIV. 37.1

within twenty (20) days after production or inspection of the documents.

Failure to proceed within this time period constitutes acceptance of the objection. For good cause, the Court may, *sua sponte* or on motion by a party, change the twenty (20) day period.

Plaintiff argues that the time for filing its motion to compel should be extended for the reason that Defendants have engaged in piecemeal document production. Indeed, Defendants have produced documents piecemeal. Nevertheless, if I followed Plaintiff's rationale, a motion to compel would never have to be filed if the document producer disgorged a few documents every twenty days. In this case, Plaintiff was refused certain document production and objections were made on May 8, 1997. The time for filing a motion to compel began to run then. No extension of the time within which to file a motion to compel was ever sought. Given the chronology in connection with the discovery and the motion, I decline to order the production sought at this late date.

WHEREFORE,

IT IS ORDERED that Plaintiff's Motion to Compel [docket no. 108] be, and it is hereby, **DENIED.**


UNITED STATES MAGISTRATE JUDGE